The Stalwart Association, Inc. *and* Sheet Metal Workers International Association, Local Union No. 19, AFL–CIO. Cases 4–CA–20165, 4–CA–20197, 4–CA–20333, and 4–RC–17695

April 8, 1993

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The questions presented here are whether the judge correctly found that the Respondent: violated Section 8(a)(3) and (1) of the Act by imposing more onerous work rules during a representation election campaign, by laying off John MacDonald, and by demoting, laying off, and failing to recall Timothy Wysong; violated Section 8(a)(4), (3), and (1) by issuing disciplinary criticism to, reassigning, laying off, and failing to recall Chris Broadt; violated Section 8(a)(1) by interrogating and threatening its employees and by disseminating and soliciting support for an antiunion petition; and, finally, by engaging in objectionable conduct that interfered with unit employees' choice in the October 10, 1991 election.[1] The Board has considered the decision and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions as modified[4] and to adopt the recommended Order as modified.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 4.

''4. By discriminatorily laying off employee John MacDonald and by discriminatorily demoting, laying off, and failing to recall employee Timothy Wysong, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.''

2. Substitute the following for Conclusion of Law 6.

''6. By issuing disciplinary criticism to employee Chris Broadt, by removing him from a work assignment, by laying him off, and by failing to recall him to available work, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(4), (3), and (1) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, the Stalwart Association, Inc., Frederick, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order, as modified.

Substitute the following for paragraph 2(c).

''(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.''

DIRECTION

It is directed that Case 4–RC–17695 is severed from Cases 4–CA–20165, 4–CA–20197, and 4–CA–20333 and is remanded to the Regional Director for Region 4. The Regional Director shall open and count the ballot of Paul Nesspor Sr., and thereafter issue a revised tally of ballots. If the revised tally of ballots shows that the Petitioner received a majority of the votes cast, the Petitioner's objections will be moot, and the Regional Director shall issue the appropriate certification of representative. If the revised tally of ballots shows the Petitioner has not received a majority of the votes cast, the election previously conducted in Case 4–RC–17695 shall be set aside and the Regional Director shall direct and conduct a second election by secret ballot at an appropriate time.

[1] On November 2, 1992, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed briefs in response to the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We also find no merit in the Respondent's allegations of bias and prejudice on the part of the judge. We perceive no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated a bias against the Respondent in his analysis of the evidence. There is no basis for finding that bias and prejudice exist merely because the judge resolved important factual conflicts in favor of the General Counsel's witnesses. *NLRB v. Pittsburgh Steamship Co.*, 337 U.S. 656, 659 (1949).

In affirming the judge's findings of 8(a)(3) violations, we do not rely on evidence that the Respondent hired a labor consultant and circulated lawful antiunion letters to employees during the representation election campaign. Furthermore, we find no need to pass on whether the July 1991 conversation between Respondent's owner Drewniany and employee Wysong entailed interrogation violative of Sec. 8(a)(1). A finding of unlawful conduct would merely be cumulative in light of several other findings of an unlawful interrogation and would not affect the remedy appropriate for such unfair labor practices.

[4] We shall amend the judge's Conclusions of Law 4 and 6 to correct the mistaken reference to Sec. 8(a)(4) in the summary of unlawful conduct affecting employee Timothy Wysong.

Richard Heller, Esq. and *Margaret McCain, Esq.*, for the General Counsel.
Martin R. Lentz, of Philadelphia, Pennsylvania, for the Respondent.
Dennis Walsh, of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This case was heard in Philadelphia, Pennsylvania, on July 13, 14, and 15, 1992. Subsequent to a requested extension in the filing date, briefs[1] were filed. The precedings are based on an election petition filed August 8, 1991, and a charge filed October 17, 1991,[2] by Sheet Metal Workers International Association, Local Union No. 19, AFL–CIO. The Regional Director's consolidated complaint dated June 16, 1992, as amended, alleges that Respondent, the Stalwart Association, Inc., of Frederick, Pennsylvania, violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act by demoting employee Timothy Wysong from shop foreman to fabricator; implementing new rules during an election period; imposing more onerous terms and conditions of employment on its shop employees; laying off Timothy Wysong, John MacDonald, and Chris Broadt; and removing Chris Broadt from his coordinator assignment, interrogating employees, and threatening employees with discharge because of their union or other protected activities. The Union timely filed objections to the election held on October 10, 1991. An objection to the ballot of Paul Nesspor Sr. was withdrawn at the hearing.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is in the construction industry engaged in the fabrication and installation of heating and air-conditioning systems and it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside Pennsylvania. It admits that at all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent was founded in 1972 and at one time Stalwart had as many as 16 employees. In the fall of 1991, it had eight employees and Owner Tom Drewniany. Four employees principally worked in the field as installers (Paul Nesspor Sr., Paul M. Nesspor Jr., Bob Yerger, and Chris Broadt); three worked in the shop as fabricators (Ray Troxell, Tim Wysong, and John MacDonald); and one (Willa Stevenson) was a secretary.

Timothy Wysong was first hired by the Respondent in 1984 and worked both as fabricator in the shop and as an installer in the field. During this period, Respondent sent him to plumbing school and he thereafter performed plumbing work for the Respondent. In 1985, he left but returned to Respondent as a shop fabricator from 1986 through 1987. After again leaving he returned in 1989 as a shop fabricator earning $11 per hour. After 6 months he received a 25-cent-per-hour raise and 6 months later asked Owner Drewniany for another raise and medical benefits. Drewniany told him he couldn't afford to give him medical benefits but he would give Wysong another 25 cents raise with the understanding that he would expect more out of him, and would have him a new job title (as shop foreman) with duties that entailed making duct sketches from blueprints; making drawings for installation; going over structural drawings; ordering the materials for the shop and the field; and coordinating things between himself, the field employees, and other trades. Although Respondent denies that Wysong was made a ''foreman,'' Wysong testified that Drewniany himself would introduce him to outside vendors as the shop foreman.

John MacDonald also worked for the Respondent on three separate occasions beginning in November 1990. After a layoff he was recalled in July 1991, and worked mostly in the shop with an hourly wage rate of $10. He was again laid off in October 1991. (On June 9, 1992, about a month before the hearing in this case, he was recalled and at the time of the hearing currently worked as a field installer making $12 per hour.)

Chris Broadt worked continuously for the Respondent from September 1990 until January 1992, performing electrical control and sheet metal work. Broadt was also an aircraft sheet metal mechanic and when work was slow for the Respondent, he worked on Owner Drewniany's personal airplane.

In December 1990, Wysong contacted Union Representative William Dorward and discussed the possibility of having union representation; however, at the time, Wysong's wife was going through a difficult pregnancy, and he didn't pursue union representation right away. However, in mid-1991, Wysong began discussions at the shop with employees MacDonald and Broadt as well as with the office secretary. On August 9, 1991, both Wysong and MacDonald signed cards authorizing the Union to be their bargaining agent.

In the meantime, in July 1991, Union Representative Dorward had two meetings with Respondent's president Drewniany. He initiated a meeting with Drewniany to see if Respondent would be interested in signing a collective-bargaining agreement and becoming a union contractor. Dorward described it as engaging in a ''top-down'' campaign, as authorized by Section 8(f) of the Act, by attempting to sign a construction industry employer to a ''pre-hire'' agreement even though he had not yet demonstrated that the Union represented a majority of the Employer's employees.

They discussed the Union's training program and Drewniany was told the program had a no-fail qualification exam for employees. After this meeting, Dorward dropped off a list of union contractors in central Pennsylvania and copies of two collective-bargaining agreements with Drewniany's secretary. One week later Dorward and Drewniany met again but Drewniany said he didn't feel as though he could fit the Union into his company at this time

[1] The General Counsel's motion to correct the transcript is granted and received into evidence as G.C. Exh. 24.

[2] All following dates will be in 1991 unless otherwise indicated.

and that he was considering subcontracting his sheet metal work.

By letter dated August 15, 1991, Dorward notified the Respondent that the Union represented a majority of its sheet metal workers, demanded recognition, and requested that Drewniany contact him for bargaining. No response was received.

On August 21, 1991, the Union filed a representation petition with the Board. It served Respondent with a copy the same day and the parties entered into a Stipulated Election Agreement, which provided that the eligible voters would include all field and shop employees engaged in sheet metal work for the Respondent. The Respondent and the Union also signed a Norris-Thermador agreement stating that the only eligible voters in the election would be Paul Nesspor Jr., Robert Yerger, Timothy Wysong, Chris Broadt, John MacDonald, and Ray Troxel, and that Paul Nesspor Sr. would vote subject to challenge. The Board conducted an election on October 10, 1991, and the tally of ballots showed three votes for the Union, three votes against the Union, and one challenged ballot. As noted above, the Union subsequently withdrew that challenge.

Wysong testified that in July Drewniany had told Wysong that the Union was out on the jobsites speaking with the employees and asked Wysong ''what do you think about the Union?'' and Wysong defensively replied that he didn't know much about the Local. Drewniany testified that he spoke to Wysong because he was concerned about ''his people'' in relation to his discussions with Dorward and that he consulted with them concerning what benefit it would be if he considered the Union. When Respondent recalled MacDonald, in July, however, Drewniany told him that if the Union came in, he ''would only be able to keep one mechanic and that all employees would have to take tests.''

In mid-August, Drewniany showed Wysong the Union's August 15 recognition demand and told Wysong to read it. He then asked Wysong ''what do you think about it?'' When Wysong did not respond, Dewniany asked him if ''anybody from the Union had approached him or talked to him''about the Union and Wysong said ''No.'' Drewniany testified that he had let everybody know that the Union had knocked on our door and there were pros and cons to accepting the Union's proposal to become organized but that he never asked employees whether they wanted to be union or didn't want to become union. He said he asked inquisitive questions about how it would help the organization and if they felt the Union would or wouldn't help the organization.

Within a week or two (no more specific dates was established) of the Union's recognition letter to Respondent, Drewniany rehired former employee Ray Troxel to work in the shop.

After Troxel's hire Wysong's job duties changed. Wysong no longer communicated with the field employees. Instead, Nesspor Jr., the field leadman, would call the shop and ask for Troxel. Drewniany began sending the outside vendors to Troxel, not to Wysong, even though at times, Troxel required Wysong's assistance when dealing with them. Troxel had worked for the Respondent in 1977 and again from 1985 through 1989. Troxel testified that both times that he left Respondent's employ it was for personal reasons. Wysong testified, however, that when he was rehired in 1989, Drewniany told him that he had to let Troxel go because ''the shop was a mess and some duct was going out not completed, and . . . he thought that Ray thought races were more important than his work.'' Troxel himself admitted that he had previously left the Employer because of personal friction between himself and Drewniany, and he also admitted that one of his hobbies was going to the racetrack.

Prior to Troxel's hiring, Drewniany had usually asked Wysong's opinion before hiring anyone in the shop, but he did not even tell Wysong that he was bringing Troxel back. Troxel testified that when he came back he initially ''respected him [Wysong]'' as the shop ''lead person'' but that after a few weeks he ''wound up'' being Drewniany's contact in the shop doing all the paperwork and ordering that Wysong had been doing.

At the end of the workday on September 4, Drewniany gave Wysong copies of a list of 17 shop instructions for everyone in the shop. The next day, Drewniany met with the shop as a group and reviewed the rules with them. Drewniany said that the reason he circulated that shop rules was to reiterate what the past and present rules were because the shop was totally disorganized, with three people in it at that time. Troxel testified that about a month after his rehire he told Drewniany, that it would be a good idea to issue written shop rules. Wysong testified that rules 5, 9, 10, 12, and portions of others were in existence before September 4, 1991, but that some other rules (discussed below) were new. At this meeting, Drewniany also told the employees that a timeclock would be installed and told Troxel to order it; however, it was not put into effect.

In August 1991, Drewniany told Broadt that he was going to be doing the Williams Township job by himself and that he would be expected to coordinate it. Broadt had never coordinated a job before and he asked Drewniany what ''coordinate'' entailed but Drewniany didn't explain. Drewniany told Broadt the job would be a two-heater installation with coils and condensers for air-conditioning and then worked with him one night for approximately 2-1/2 hours doing the sketches for the duct work for fabrication, telling Broadt the session was for training purposes. Broadt made an initial start on the job about a month later and that it was basically October before he and Paul Nesspor Sr. really began working on it for 2 days together. He then worked the job alone for 3 days doing duct work. Meanwhile, Broadt had two conversations with Drewniany in which Drewniany once asked him who was responsible for bringing in the Union and once asked who had signed union cards. (One conversation was at work about a month prior to and one at home before the election.) Broadt testified that when he wasn't working at the Williams Township job he was working at Alliance Hall under the lead of Nesspor Jr.

During the first week in September, the shop employees received a petition from Nesspor Jr. which read: ''I , an employee of the Stalwart Association, Inc.—Do not want to be represented by Local 19 Sheet Metal Workers Union. I wish to remain as a non-union employee and desire no change.'' This petition, accompanied by a two-page letter, was signed by Paul Nesspor Jr. and was addressed to ''Tim, Ray and John'' (Wysong, Troxel, and MacDonald). The letter stated that:

> We, the guys in the field, have decided to write letters against Local 19 Sheet Metal Workers Union and need

> shop support in uniting with field workers in signing a simple statement that you as an individual are opposed to changing and desire no change. Your individual signature will be sent with all of ours in the field to show unity of all seven of our employees. If you so desire please sign five copies of this statement. One copy of/from all of us will be sent to National Labor Relations Board, Martin Lynch (Lentz)—Atty for Co., Al Peterich—Mcklinon Group—Non Union Representative, Local 19 Union Rep.—Mr. Dorward and Local 19 Union Attorney Mr.? please put 5 copies in an envelope and leave in my box on lobby desk. any questions or comments call A.H. (Alliance Hall). Paul

Nesspor Jr. began working for the Respondent in March 1985. He testified that he currently does HVAC mechanical work and his duties include mechanical installation, reviewing shop drawings, installing materials and equipment, and making sure everything is in order. He testified that Drewniany communicates with the other employees through him and instructs him to give the employees messages. He lays out work for the field employees and tells them what they are going to do each day and the field employees give him their weekly timesheets. Field employees report to Nesspor Jr. unless they are alone on a job, in which case they reported to Drewniany. Employees consider Nesspor Jr. to be the leadman out in the field. Nesspor Jr. testified that one of his job responsibilities was to ''make sure that everything is in order.'' Although other employees have no health insurance payments or deductions, deductions for health insurance and whenever he works at the shop rate or shop salary he receives medical insurance paid for by the Respondent. He also is allowed to drive to and from work in a vehicle owned by the Respondent and he served as the Respondent's observer at the Board election on October 10.

Paul Nesspor Sr. is Paul Jr.'s father and he is over 65 years old and collects social security but has worked frequently for Respondent when fieldwork is available.

Robert Yerger worked regularly as a field employee for Respondent from 1989 until he quit in February 1992. He worked in the field as a pipefitter and sheet metal mechanic. Yerger testified that he regularly drove the Respondent's truck and transported materials to the jobsites because he was the only employee with a class 3 driver's license.

Yerger testified that Nesspor Jr. told him that Drewniany wanted an antiunion petition done but that Drewniany didn't want to have anything to do with it. He also testified that Nesspor Jr. told him that if we could get all the employees to sign it, the Union wouldn't bother to try to get into the shop.

Nesspor Jr., however, testified that Drewniany did not ask him to prepare and circulate this petition and that he never told Drewniany until the day of the hearing ''who signed it.'' He said he gave the petition to Yerger and Broadt separately and agreed that neither signed it (thereby making the statement in his letter an apparent contradiction). Broadt and Yerger each testified they spoke with Nesspor Jr. concerning this petition. Broadt testified that about 6 weeks before the election, Nesspor Jr. told him that ''Tom [Drewniany] wanted him to draw up a petition and pass it around to the guys to say that we didn't want a Union vote.'' He said that Drewniany told him that the petition was supposed to come from one of the guys. Broadt further testified that Paul Nesspor Jr. gave him ''a stack of forms'' (the letter and the petition) to sign but Broadt told him ''I'm not signing the fucking things.'' Broadt testified that he refused to sign the antiunion petition because ''he felt he was being railroaded into something he didn't have to do.'' Later that day, Drewniany told him to look at an envelope left for him on the front desk which contained the petition.

MacDonald testified that the petition was on a shop table when Drewniany entered and MacDonald called it to his attention and Drewniany acted surprised and said ''the field guys are against the Union.'' Wysong testified he called the Board concerning the effect of the petition and, after a phone conversation with the Board agent (who said it would have no effect on the election), all three shop employees signed the petition.

Between September 9 and October 1, Drewniany sent a series of four letters to employees. In the first three letters, Drewniany, urged the men to vote ''No'' in the October 10 election and emphasized that Respondent had provided and would continue to provide job security to its employees.

The first letter also said Drewniany was ''shocked and upset by the Union situation'' and that he has ''tried to provide excellent job security.'' The letter went on to say that ''we have a great work force and we know that you do an excellent job.''

The second letter said that when Local 19 tries to organize employees, it depends on inside people to do much of their campaigning. He wrote:

> The Unions do a good job of coaching inside people with a personal axe to grind on how to stir-up dissatisfaction, spread rumors and how to campaign for the Union. . . . ''Don't let an inside organizer talk you into supporting this infamous Sheet Metal Local #19.'' . . . read that it is our people who can provide the good job security we all want and need.

The third letter said:

> I would like to discuss real job security with you and that it is a shame that a few dissidents are trying so hard to undermine the company. Make no mistake about it, these few people have been very well trained by the highly paid outside union professional organizer to let you to follow him. Don't fall for the inside organizers promises of great things to come and a pot of gold at the end of the rainbow. Vote for real job security. Vote No on October 10th.

In his last letter Drewniany pointed out how costly union membership could be to the employees and their families and stated:

> I continue with my letters despite the overwhelming No vote next week is that the election is so important to everyone's future and I do feel obligated to provide everyone with the facts.

Drewniany also hired a company to talk to employees before the union election to help convey a message that the Company should be nonunion.

During the week preceding the October 10 election, Drewniany called Wysong to his office and asked him what he thought about the election. Before Wysong responded, the telephone rang and Wysong left. A second and third conversation occurred on the same day near the shop. Drewniany asked Wysong if he had any questions for him concerning the election, and Wysong replied that he had heard from both sides and he was ready to make up his own mind. Five minutes later, Drewniany came to the shop, told Wysong he wanted to speak with him and told him how good the Company had been to him, and how pieces of duct had left the shop improperly fabricated. At the end of the conversation, Drewniany told Wysong that if ''anybody wanted to work for the Union that they could go down the road and do that.''

Broadt testified that the day before the election Drewniany approached him at the Alliance Hall jobsite, spoke about how important the election would be to Broadt and his family, and then told Broadt he had not been doing what was expected of him at the Williams Township job and asked Broadt if he wanted to run the job because if he didn't, Drewniany could arrange it.

The election was held on October 10 at 4:30 p.m. Broadt, Wysong, and MacDonald testified they voted for the Union. Yerger testified that after the vote, and he was in Drewniany's office with Nesspor Jr., and Troxel and all three told Drewniany that they had voted against the Union.

MacDonald testified that the first workday following the October 10 election, he and Drewniany were in the storage room when Drewniany said to him ''if you wanted to work for the Union, why don't you ask them for a job.''

On or about October 18, Drewniany laid off Wysong and MacDonald after calling together Wysong, MacDonald, and Troxel. He explained he had to let two of them go because work was getting slow and that it would have to be Wysong and MacDonald because they did not have a valid driver's license.

On December 9, Nesspor Jr. gave Broadt a letter from Drewniany which stated that Broadt had been expected to coordinate the installation of duct work at the Williams Township job and reprimanded him for his lack of coordination of the project. The letter directed Broadt to contact him by December 11 to inform him of what his intentions would be concerning his future role on the Williams Township job.

Broadt called Drewniany who proceeded to tell Broadt he thought Broadt was a construction manager. He also said he thought Broadt was a mechanic, but obviously he wasn't and that he didn't think Broadt was capable of doing the Williams Township job. Drewniany further stated that he ''didn't know how to be fair with Broadt anymore in view of the fact that Broadt brought charges against him.'' (Broadt apparently was identified in the investigation of the initial complaint dated October 18.)

On December 10, Nesspor Jr. gave Broadt another letter from Drewniany. In this letter, Drewniany said that he wanted Broadt to communicate with Troxel and him on a daily basis concerning the project, that work on the project would restart in the near future after the Respondent obtained materials on the job, and that he would notify Broadt when work would start. Two weeks later, Drewniany told Broadt to take Yerger to the Williams Township jobsite. Thereafter, Broadt no longer worked on the Williams Township job. Drewniany said he did not remove Broadt, but that Broadt voluntarily ceased working on it.

At the end of the workday, on January 8, 1992, Paul Nesspor Jr. laid off his father and Broadt. No reason was given for the layoff.

By letter dated January 27, Drewniany, told Broadt that he had tried calling him concerning a recall to work but to no avail. Broadt called Drewniany the day following receipt of the letter and informed him that the phone numbers in the letter were wrong and told him his Sellingsgrove phone number, which Drewniany already had on file, was where to reach him. Broadt again gave Drewniany his Sellingsgrove phone number, but Drewniany told him he gave the available work to somebody else. (Drewniany testified that he recalled Paul Nesspor Sr. for a week or less in the end of January.)

Drewniany testified he again attempted to contact Broadt for recall by telephone on Friday, March 27, and Sunday, March 29. He then sent Broadt a letter, to his Gilbertville address, stating that because the Company had attempted to recall him twice and it hasn't heard from him, the Company will now consider him unavailable for work.

The Respondent previously had placed classified newspaper ads on March 13 and 15, 1992, seeking pipefitters, HVAC (heating, ventilation, air-conditioning), and plumbers. Drewniany testified, however, that although he anticipated hiring more employees, work never materialized and he didn't hire anyone. In April 1992, Drewniany began using Ralph Fried as a subcontractor doing temperature control and pipe insulation (and some duct work). He attested that he attempted to recall Chris Broadt in March to run thermostat wire at the Monocacy jobsite but when he couldn't reach Broadt, he gave the work to Fried.

David Renn is supervisor of buildings and grounds for the Daniel Boone School District, the client for the Monocacy contract. He testified that he visits the Monocacy jobsite daily. Renn testified that there are two people doing the work, Nesspor Jr. and Fried. He attested that he sees Nesspor Jr. there every day and Fried about every other day. He observed that he saw both men do the same work and that this work entails installing duct, installing pumps and pipes, and installing oil burners and oil tanks.

Respondent MacDonald was recalled as a field installer on June 9. No other attempt to recall MacDonald was made before June 9, and Wysong was never recalled since his October 1991 layoff. Wysong testified that the Respondent had his address and phone number and that he had an answering machine. Wysong testified that John MacDonald called him in June, after he was recalled and that he then called Drewniany to ask about available work. Drewniany told him he tried to get in touch with him because he had some fabrication and small installation work but that the job was no longer available because he had hired MacDonald.

III. DISCUSSION

The primary events which caused the charges in these proceedings were the organizational election and the subsequent layoffs of each of the three employees who had voted for the Union.

A. *Credibility and Motivation*

In a layoff or discharge case of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected, concerted activities were a motivating factor in the employer's decision to terminate them. Here, the record shows that Respondent's owner was well aware of union activity and that it had engaged the services of a consultant to help persuade employees to vote against the Union in the scheduled Board election. The owner also engaged in certain unfair labor practices, otherwise discussed below, and sent the employees repeated letters in which he attempted to influence them to vote against the Union. Moreover, he is alleged to have disseminated and solicited employee support for an antiunion petition, an allegation which I find below to be proven by the evidence.

Here, my evaluation of the testimony and demeanor of the several witnesses, in the context of the overall record, leads me to concur with the General Counsel's contention that certain testimony by Respondent's witnesses Drewniany and Nesspor Jr. should not be credited. I find that Owner Drewniany's testimony often appeared to be inconsistent, vague, or self-serving. For example, Respondent's answer admits that the Respondent removed Chris Broadt from an assignment as coordinator of the Williams Township job, but Drewniany's testimony attempts to imply that Broadt voluntarily rejected the position. Also, a document prepared for the hearing by Drewniany lists the names of Respondent's employees from September 1991 to July 1992 and their layoffs and recalls but does not show any work recall attempt for or by the Respondent in January 1992 with respect to Broadt or Nesspor Sr., despite Drewniany's testimony that in late January 1992, Nesspor Sr. was called back to work for 1 week or less and evidence that the Respondent sent a letter to Broadt on January 27, 1992, concerning alleged recall attempts.

Drewniany also testified that he was not aware that the antiunion petition was being circulated, had no part in ''arranging'' its circulation, and did not know who signed it until the start of the hearing.

However, on cross he testified that the first time he knew it was being circulated was when MacDonald showed it to him in September 1991. Drewniany asserted he didn't read it at that time, however, MacDonald credibly testified that he showed the petition to Drewniany before the election and that Drewniany acted surprised and responded with a comment about ''the field guys'' being ''against'' (this was the opening statement of the petition). This clearly shows that he then looked at who signed it or otherwise had prior knowledge of its preparation and contents.

I do not credit Nesspor Jr.'s testimony that Drewniany did not ask him to prepare and circulate this petition or that he never told Drewniany until the hearing who signed it.

Broadt and Yerger (who voted against the Union and subsequently voluntarily left Respondent's employment) each testified that they spoke with Nesspor Jr. concerning this petition when it was circulated. Nesspor Jr. told them that ''Drewniany'' wanted him to draw up a petition and pass it around to the guys to say that we didn't want a union vote and that Drewniany told him that the petition was suppose to come from the guys without his being involved. (Also, after he initially declined to sign it, Drewniany personally called Broadt's attention to an envelope with the petition in it that was left for him at the front desk in the office, a further implication of Drewniany's knowledge of the affair.)

Nesspor Jr.'s letter, accompanying the antiunion petition, stated that the ''guys in the field'' had decided to write letters against Local 19. This statement clearly is false. In fact, Nesspor Jr. did not author the letter or the petition with the assistance or concurance of the other two field employees (other than his father), and Yerger and Broadt did not sign it. Nesspor Jr. concededly asked Drewniany's secretary for the Respondent's attorney's name and address and sent him a copy, yet the petition was neither sent to the Board nor to the Union, as suggested in the petition.

Drewniany also testified that he had no knowledge or opinion whether Wysong, MacDonald, or Broadt supported the Union, yet the persuasive testimony of Yerger, an unbiased witness, shows that following the election, he, Nesspor Sr., and Troxel were in the office with Drewniany when each of these three men all told him they voted against the Union (neither Troxel nor Drewniany, witnesses called by the Respondent, refuted this testimony).

Under these circumstances, my overall evaluation of the testimony leads to the conclusion that Drewniany's and Nesspor Jr.'s testimony is self-serving, contradicting, untrustworthy, and unreliable. Accordingly, it will not be credited where it is in conflict with the credible testimony or circumstances disclosed by other witnesses, documents, or events.

Although the Respondent calls attention to a friendship and common interest in aviation shared by Broadt and Drewniany, and contend that there is no evidence of an antiunion bias involving Broadt, a finding if such specific and direct animous is unnecessary for each specific alleged discriminatee, in a situation, such as here, where there is an overall showing of animous and motivation, see *Vemco, Inc*., 304 NLRB 911 (1991). Moreover, as noted above, although Broadt attempted to display a posture of neutrality, Drewniany knew right after the election that Broadt had voted in favor of the Union. This, as well as the showing that Broadt was subjected to preelection interogation, directly ties Broadt to Respondent's antiunion motivation.

Under these circumstances, I find that the General Counsel has met his initial burden and has presented a strong prima facie showing, sufficient to support an inference that the Union support evidence by employees Broadt, MacDonald, and Wysong was a motivating factor in Respondent's decision to lay off or take other adverse action against them.

B. *Demotions, Layoffs, and Alleged Violations of Section 8(a)(3)*

Once the General Counsel establishes a prima facie case, the burden shifts to the Respondent to show that it would have taken the same action even in the absence of union considerations. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Accordingly, the testimony will be discussed and the record evaluated to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Respondent contends that Wysong was not really demoted, that Broadt voluntarily removed himself from a position as

a job coodinator, and that each was laid off because of a lack of work and because neither Wysong nor MacDonald had a current driver's license.

Turning first to the allegation regarding Wysong's change of status from shop foreman to fabricator, the record shows that Union Representative Dorward spoke to Wysong on his visit to the shop and Wysong mentioned the benefits of union representation to Respondent's secretary. After Drewniany received the Union's demand for recognition letter in August 1991, Drewniany questioned only Wysong and Wysong refused to divulge any information concerning the union campaign.

Despite the fact that Troxel had a spotty work record with the Respondent and had left because of personal friction between himself and Drewniany (Wysong credibly testified, that when he returned in 1989, Drewniany told him that he had to let Troxel go because ''the shop was a mess and some duct was going out not completed, and . . . he thought that Ray thought races were more important than his work''), Drewniany then sought out Troxel. Troxel had checked on the availability of work approximately 9 months earlier but was not called back until August, after Drewniany had recieved the Union's recognition letter. Meanwhile, Drewniany had first recalled MacDonald in June 1991, rather than Troxel. Troxel testified that Drewniany indicated that work was slack but that Drewniany was therefore doing more bidding and wanted him to run (drive) bids on jobs and help with a backup on duct work. Drewniany didn't consult with Wysong about Troxel's rehire and, within a short time, Drewniany shifted Wysong's foreman-leadman type duties to Troxel.

Although Troxel makes some undisclosed number of bid runs (a task that also was done by Drewniany and his secretary) his estimate that he drove two or three times a week included the delivery of duct work, a job previously performed by Yerger until he left at the end of February 1992, appears to be an exageration or an estimate that would apply to period after February 1992, when both Yerger and the secretary were no longer employed.

The Respondent makes much of Wysong's lack of a driver's license; however, I find that this essentially is a pretextual and insubstantial excuse (especially prior to Yerger's departure), and that the running of bids was a mere occasional convience for Drewniany or his secretary and otherwise it is inconsistent with the purported need (in August and the fall of 1991), for curing the asserted problem of a backup in the fabrication of duct work (i.e., taking a skilled fabricator away from necessary production to run ministerial errands).

The circumstances noted above, when considered in the context of the timing of Troxel's rehire and assumption of leadman/foreman duties and Wysong's de facto demotion shortly after the demand for recognition and shortly before the election, preclude a finding consistent with Respondent's assertations that its actions in this regard were for legitimate, nonpretextual reasons. Accordingly, I conclude that the Respondent has not refuted the General Counsel's showing that its actions were motivated by and were in retaliation for Wysong's protected activity, all in violation of Section 8(a)(1) and (3) of the Act, as alleged.

After Wysong's demotion, and 8 days after the election (and Respondent's clear identification of Wysong, MacDonald, and Broadt, the three employees who voted in favor of the Union), Respondent put Wysong and MacDonald on layoff from the shop but retained Troxel, the only shop employee who had informed Drewniany he had voted against the Union.

Again, the holding of a driver's license is offered as a justification for Respondent's choice to retain Troxel, yet it was not a condition of employment and only became an issue after the start of union activity. Accordingly, and for the reasons discussed immediately above, I find Respondent's assertations to be pretextual.

Moreover, Respondent's other asserted reason for hiring Troxel, that duct work was backed up on the Alliance Hall project, appears to be specious inasmuch as the purported rush work lasted only 2 days after Troxel was hired. Respondent's claim that Yerger and Nesspor Jr. complained about the shop's incomplete shipments of duct work was never corroborated by of Nesspor Jr. or Yerger. Drewniany also testified that he did not have problems with Wysong's and MacDonald's work peformance and their work performance was not a basis for their layoffs. Drewniany testified that he knew in August that he probably would run low on work in the next few months, nevetheless he hired Troxel and placed the two shop employees who voted for the Union on layoff. Accordingly, I am not persuaded that a lack of work and a lack of valid drivers' licenses were the real motives for the layoffs. Respondent has failed to show that both MacDonald and Wysong would have been let go were it not for the union activity (which appears to be the real reason Troxel was hired just prior to the election). It also is noted that although Respondent makes much of its need to run bids on possible jobs, it presented no documentary evidence that it actually was actively pursuing additional work at this time.

Under these circumstances, and in view of the timing of Respondent's various actions immediately following the union recognition demand and the following vote on October 10 and the General Counsel's strong showing regarding illegal motivation, I find the Respondent's stated reasons are not supported by persuasive evidence and otherwise are pretextual. Accordingly, I conclude that the Respondent has failed to show that MacDonald and Wysong would have been laid off absent their union activities. The General Counsel otherwise has met its overall burden of proof and I further conclude that Respondent's layoff of these two employees is shown to have been in violation of Section 8(a)(1) and (3) of the Act, as alleged.

This conclusion is reinforced by Respondent's subsequent actions in March 1992, when it placed classified ads for HVAC plumbers and pipefitters (Yerger's position), rather that attempting to recall Wysong who had been sent to school by Respondent for training in this area and had done such work previously. Again, rather than recalling laid-off prounion employees, Respondent hired a so-called independent contractor and used that person to perform regular work along with employee Nesspor Jr.

In addition to the two shop employees, Respondent laid off field employee Broadt in early January 1992. This occurred after he became involved in Board processes and was identified in election objections and unfair labor practice charges. Drewniany clearly demonstrated that he knew about, and was hostile toward, Broadt's participation when he told

Broadt that ''in view of the charges that are being filed against me I don't know how to be fair with you anymore.''

The layoff also occurred after Broadt was formally sent two consecutive letters by Drewniany dated December 9 and 10, in which Drewniany sets forth a self-serving description of his own alleged preceptions of the history of Broadt's apparent assignment as ''coordinator'' of the Williams Township job.

In August, just prior to the Union's recognition demand Broadt was assigned this heater and air-condition installation job. He was told he would do the job by himself and would be expected to ''coordinate'' it. Drewniany helped Broadt sketch out the plans for the job but did not explain in any detail what his ''coordination'' responsibilities would be. Some preliminary work occurred on 3 days in October (Nesspor Sr. helped out on 1 day with duct work), but although Broadt was assigned to work at Nesspor Jr.'s job location occasionally asked when he would be sent back to that job Nesspor Jr., his leadman, told him not to worry about it. Broadt otherwise understood they were waiting for the heaters to be delivered. It appears that following the election, Drewniany stopped personally communicating with Broadt but had Nesspor Jr. ask him about job progress and then sent him letters criticizing him for his performance and removed him from the coordinator position.

In view of the General Counsel's prima facia showing regarding motivation as discussed above, it's the Respondent burden to justify its actions in this regard.

Although Drewniany testified to various alleged problems with Broadt's performance as a coordinator, Respondent failed to demonstrate that he made any reasonable efforts to communicate with or instruct Broadt about the job prior to suddenly and uncharacteristically giving him two formal and critical letters and I am not persuaded that he would have removed Broadt in the absence of his union support and his participation in Board processes. Respondent's actions in unfairly issuing critical letters and abruptly removing Broadt from the so-called coordinators assignment are the equivalent of a disciplinary warning and it has the effect of punishing Broadt for his union support. Moreover, as discussed below, Drewniany's actions served as a preclude to his later layoff of Broadt and failure to recall him and, accordingly, I find that Respondent's conduct therefore violates Section 8(a)(1), (3), and (4) of the Act, as alleged.

Turning to the issue of Broadt's layoff, the General Counsel has presented a strong prima facie case demonstrating that Broadt was laid off because of his union activity and participation in Board processes. Broadt agressively refused to sign the antiunion petition proffered to him by Nesspor Jr. He was one of only three employees who voted for the Union, all three of whom were later laid off. Drewniany directly expressed animus toward Broadt by saying he did not know how to be fair with him in view of the unfair labor practice charges in which Broadt was involved, and then laid him off soon thereafter.

Respondent's defense is based on a contention that the layoff was due to lack of work. The record, however (specifically the testimony of the School District Buildings Supervisor Renn), shows that at the time of the layoff, Drewniany was aware that the Respondent had been awarded the lenghty Monocacy School job on which Broadt could have worked. Moreover, in slack work periods before the election Drewniany had retained Broadt, whom he valued at the time, by assigning him to work on his private airplane. As noted by the General Counsel, the fact that Nesspor Sr. was laid off the same time does not negate a finding that Broadt's layoff was illegal, see *Alliance Rubber Co*., 286 NLRB 645, 647 (1987). Also, Nesspor Sr. was an older man, on social security, who had previously been sporadically laid off. Moreover, unlike Broadt, he was later recalled (one time in January 1992, an occasion not specifically listed in Drewniany's abstract-exhibit which purported to list the employees' work record between September 1991 and July 1992). Near the end of the day on the day of his layoff, Broadt reported to Nesspor Jr. that he had a startup problem with an air-conditioning unit and still had six more to go. Nesspor Jr.'s response was to say that he had a problem too and then informed Broadt that ''I'm suppose to lay you off today.''

The record also shows that thereafter the Respondent made questionable efforts to recall him for available work. Drewniany did not try to contact Broadt at his parent's address and telephone number although this information had been specifically given to Respondent's secretary. Rather, on the same day that Drewniany probably received notice of the Union's charge concerning Broadt's layoff, Respondent sent a letter to the wrong address. Broadt telephoned Drewniany as soon as possible to inform him of his availability to work, but was told that he was too late and that the work had been given to someone else. During the time Broadt was laid off, Respondent advertised for employees, recalled Nesspor Sr. for a brief period, and subcontracted work to an independent contractor for a more lenghty period. Subcontractor Fried was used for some control and insulation work, the general type of control and other electrical work Broadt had done on previous jobs for Respondent. Although Broadt was utilized regularly for electrical work, he was also regularly used in other aspects of the trade, and although he was not laid off for lack of ability, Drewniany, on cross-examination, expressed a number of critical appraisals of his work including statements that jobs ''didn't work out well'' and that ''he needed extreme supervision.'' These reasons were not previously advanced as reasons for Broadt's layoff and I find that Drewniany's resort to such justifications is indicative of an intent to mask his true reasons.

Under these circumstances, and especially the strong showing of illegal motivation and the timing of Respondent's actions following immediately after Broadt's identification in an action before the Board, I find the Respondent's stated reasons are not supported by persuasive evidence and otherwise are pretextual. Accordingly, I conclude that the Respondent has failed to show that Broadt would have been laid off absent his union activities. The General Counsel otherwise has met his overall burden of proof and I further conclude that Respondent's layoff of this employee is shown to have been in violation of Section 8(a)(1), (3), and (4) of the Act, as alleged.

C. *Implementation of New Shop Rules*

On September 4, after the Union filed the petition for representation, and a little over a month before the election, the Respondent issued a list of 17 written rules. The ''Shop Instructions'' are comprised of rules and procedures that the shop employees were expected to follow and the last rule,

rule 17, stated that ''Any violations in the above stated procedures will be considered uncooperative.'' Although some of the instructions were simply codifications of rules and procedures that had previously existed, there had previously been no company policies about keeping personal notes out of the shop office or keeping paperwork in the office. (Wysong had previously been allowed to have personal notes and to take paperwork home (rules 1 and 2).) Also, Wysong had previously been given a key to the back door to let himself in, but after this rule was put into effect he no longer had a key to the shop, and had to wait for someone to let him in (rule 6). Finally rule 13, states that if an employee had more than two personal calls per week, his pay would be docked by 5 minutes per call unless he had permission to make the call. There was never any previous policy to impose such disciplinary action on employees for personal phone calls. Both Wysong and MacDonald previously made and received personal phone calls from the shop, with Drewniany's knowledge and they were not disciplined.

Respondent instituted new rules that were more onerous than those that were in effect before the union campaign. These rules did not merely memorialize existing rules, but affirmatively imposed new sanctions against the shop employees during the critical period just prior to the election. Moreover, rule 17 implicitly implies a new warning that rule violations will result in unspecified discipline by being specifically identified as ''uncooperative.'' Although some of the rules are not new or onerous, the timing of the rules and the inclusions of some new or more onerous rules just after the Union's demand for recognition lead to a conclusion that they were discriminatorily motivated in response to and in order to discourage union activity. There is no showing why all the rules had to be reiterated or established at this particular time (except for paperwork or possibly shop cleanliness and order), and I find that Respondent did not prove that it would have instituted the shop rules regardless of union activity. Accordingly, I find that Respondent has not rebutted the General Counsel's prima facie case and I conclude that by implementing the total package of shop rules on and after September 4, Respondent is shown to have violated Section 8(a)(3) and (1) of the Act, as alleged.

D. *Alleged Violations of Section 8(a)(1)*

The record here shows that Owner Drewniany questioned Wysong about the Union at the workplace on three occasions. Wysong was not an ''open'' union adherent (but had contacted the Union and had begun to talk to other employees) and as Drewniany did not state a purpose for this questioning nor did he assure Wysong against reprisals, I find that Respondent's interrogation of Wysong in July, ''what do you think about the Union,'' August, ''what do you think about this'' (the Union's recognition demand) and October,''what do you think about the election,'' a statement that was followed by a remark that: ''if any body wanted to work for the Union they could go down the road and do that,'' interfered with and coerced Wysong in his exercise of Section 7 rights.

These circumstances are consistent with those in *Sunnyvale Medical Clinic*, 277 NLRB 1117 (1985); and the ''totality of the circumstances'' test including (1) the nature of the information sought; (2) the identity of the questioner; (3) the place and method of interrogation; and identity of the questioner; (3) the place and method of interrogation; and (4) the background surrounding the questioning. The issue of whether an employee is an open and active union supporter is also relevant to evaluating an alleged unlawful interrogation. Three additional factors considered in deciding whether a particular interrogation is coercive are: (1) whether the employer had a valid purpose for obtaining information; (2) whether the employer communicated its purpose to the employees involved; and (3) whether the employees were assured that no repisals would be taken as a result of the information they provided and it is not necessary for all indicia of a coercive interrogation to be present in order to find a violation.

The Respondent also interrogated Broadt in September, at Broadt's home, about his union sympathies and support. Drewniany specifically asked him who was responsible for bringing in the Union and who signed union cards. At the time that Drewniany asked Broadt these questions, 1 month and then 2 weeks before the election, Drewniany knew the Union claimed to represent a majority of Respondent's employees and he apparently wanted to find out the identity of its supporters. Broadt also was not an open or active union supporter and Drewniany's questions sought sensitive information at a critical time. Under these circumstances, I am persuaded that the totality of the Respondent's owner's conduct demonstrates improper interrogation and I find that the Respondent is shown to have violated Section 8(a)(1) of the Act in each of these respects, as alleged.

On the first day after he returned to work after the election Drewniany told MacDonald, ''if you want to work for the Union, why don't you ask them for a job.'' This strongly conveyed Drewniany's knowledge of MacDonald's vote and his anger with it. The statement suggested that Respondent did not desire MacDonald's services, and implies that he would be discharged, see *Mack's Supermarkets*, 288 NLRB 1082 (1988).

The week before the October 10 election, Drewniany also told Wysong how good the Company had been to him and ended up telling him if anybody wanted ''to work for the Union that they could go down the road and do just that.''

In each instance, once before and once right after the election, when Drewniany had learned who had voted for the Union, Respondent implicitly threatened discharge as a consequence of union support (a threat thereafter confirmed by their respective layoffs only 8 days after the election), and I find that the Respondent is shown to have violated Section 8(a)(1) of the Act in each of these respects, as alleged.

The day before the October 10 election, Drewniany discussed the election with Broadt at the Alliance Hall jobsite and told Broadt that the election would be important to Broadt and his family. Drewniany then said Broadt was not doing what was expected of him at the Williams Township job and he asked Broadt if he wanted to run the job because if he didn't, Drewniany could arrange it. At that time, Broadt had declined to sign the antiunion petition distributed by Nesspor Jr., and the petition had personally been bought to Broadt's attention by Drewniany when he said there was an envelope (with the petition) that he thought Broadt would want to look at.

No problems with Broadt's acting as coordinator of the Williams Township job were mentioned prior to the election (and Broadt's vote for the Union), and the sudden threat by

Drewniany to remove him from the assignment (again, a threat implement, as discussed above, shortly after Drewniany found that Broadt was identified in the investigation in the Board's complaint) constitutes a threat to retaliate against an employee for exercising his rights under Section 7 of the Act and I find that the Respondent is shown to have violated Section 8(a)(1) of the Act in this respect, as alleged.

Finally, the record shows that Nesspor Jr. solicited support for and distributed an antiunion petition to the employees on worktime on the Respondent's premises.

As noted above, I do not credit Drewniany's or Nesspor Jr.'s testimony regarding the preparation of the petition. I credit Yerger's testimony that Nesspor Jr. told him that Drewniany had asked Nesspor Jr. to draw up an antiunion petition so as to not disclose Drewniany's involvement.

Otherwise, I accept the General Counsel's argument that although Nesspor Jr. was not a statutory supervisor, he should be found to be Respondent's agent.

Section 2(13) of the Act states:

> In determining whether any person is acting as an ''agent'' of another person so as to make such other person responsible for his acts, the questions of whether the specific acts performed were actually authorized or subsequently notified shall not be controlling.

The test for agency is whether, under all circumstances, an employee would reasonably believe that the alleged agent was reflecting company policy and speaking for management. Here, the record shows that the Respondent's employees could reasonably believe that Nesspor Jr. spoke on behalf of management. Nesspor Jr. acted as one with more authority than the other employees. He was the leadman out in the field. The employees reported to him and in turn the employees believed he reported to the Respondent. Nesspor Jr. testified that one of his responsibilities was to ''make sure that everything is in order'' and he laid off Broadt and questioned him about the Williams Township job. Nesspor Jr. was the only employee of the seven who had payroll deductions for health insurance, a fringe benefit never offered to the other employees. The evidence otherwise shows the employees reasonably believed that Nesspor Jr.'s actions reflected company policy and spoke for management and therefore he must be considered to be an agent within the meaning of the Act.

It is clear that Drewniany was aware of the petition but failed to dissociate itself (and in fact actually drew Broadt's attention to the petition, enclosed in an envelope), from Nesspor Jr.'s actions thereby supporting a finding that Nesspor Jr. had apparent authority to act on behalf of management in his solicitation of support for his antiunion petition. As an agent of the Respondent, Nesspor Jr.'s distribution and solicitation of employee support for the antiunion petition constitutes an improper interference with employee rights and I find that it is shown to be a violation of Section 8(a)(1) of the Act, as alleged. See *Dentech Corp.*, 294 NLRB 924 (1989).

E. *Objections*

In view of the findings above, I also conclude that the evidence which supports a finding of unfair labor practices by the Respondent also shows objectionable conduct within the scope of the election objections which are the subject of the proceeding in Case 4–RC–17695 referred to this court by the Regional Director. The parallel unfair labor practice and objections include actions by the Respondent prior to the election which included unlawful threats, and establish objectionable conduct which interfered with the employees' exercise of a free and untrammeled choice in the election. I recommend that the results of the election held on October 10, 1991, be set aside and that a second election be conducted.

CONCLUSIONS OF LAW

1. The Respondent, the Stalwart Association, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union sympathies and activities or those of other employees, by threatening employees with discharge or loss of assignments or unspecified reprisals, and by disseminating and soliciting employee support for an antiunion petition through its agent, Paul Nesspor Jr., Respondent has interfered with, restrained, and coerced employees in the excerise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By discriminatorily laying off employees John MacDonald and Timothy Wysong and thereafter failing to recall employee Wysong, Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

5. By imposing new shop rules which included more onerous terms and conditions of employment, Respondent engaged in an unfair labor practice in violation of Section 8(a)(1) and (3) of the Act.

6. By discriminatorily issuing disciplinary criticism, removing employee Timothy Wysong from an assignment as shop foreman, and removing employee Chris Broadt from an assignment and thereafter laying off and failing to recall employee Broadt, Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the Act.

7. The General Counsel has failed to prove by a preponderance of credible evidence that the Respondent engaged in any other unfair labor practices as alleged.

REMEDY

Having found Respondent to have engaged in certain acts and conduct which interfered with, restrained, and coerced employees in the exercise of their Section 7 rights, I shall recommend that it be ordered to cease and desist therefrom. In addition, I shall recommend that it take certain affirmative action designed to remedy the unfair labor practices.

In view of the objectionable conduct occurring prior to the election, I recommend that the Board set aside the representation election in Case 4–RC–17695 and, after an appropriate remedial period, conduct a second election.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to reinstate all employees laid off, and not subsequently rehired, to their former jobs or substantially equivalent positions (dismissing, if necessary any temporary employees (or so-called subcontractors)) or employees hired subsequent to their time of layoff, without prejudice to their seniority or other rights and privi-

leges previously enjoyed, and make them whole for any loss of earnings they may have suffered because of the discrimination practiced against them by payment to them a sum of money equal to that which they normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),[3] and the Respondent expunge from its files any reference to their layoff or to disciplinary criticism, and notify them in writing that this has been done and that evidence of the unlawful layoff or disciplinary criticism will not be used as a basis for future personnel action against them.

Otherwise, it is not considered to be necessary that a broad order be issued.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, the Stalwart Association, Inc., Frederick, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them Section 7 of the Act by interrogating employees concerning their union sympathies and activities or those of other employees; by threatening employees with discharge, loss of assignments, or unspecified reprisals; by disseminating and soliciting employee support for an antiunion petition; or by imposing new shop rules with more onerous terms and conditions of employment.

(b) Issuing disciplinary criticism, removing employees from assignments, and laying off any employees and thereafter failing to recall them, or otherwise discriminating against them in retaliation for engaging in union activities, participating in charges filed with the Board, or participating in other protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Chris Broadt, John MacDonald, and Timothy Wysong immediate and full reinstatement and make them whole for the losses they incurred as a result of the discrimination against them in the manner specified in the remedy section above and expunge from its files any reference to their layoff or to Broadt's diciplinary criticism or removal from an assignment and notify them in writing that this has been done and that evidence of the unlawful layoff and other actions will not be used as a basis for future personnel actions against them.

(b) Revoke any shop rules imposed on or after September 4, 1991, that impose more onerous terms and conditions of employment.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of backpay due under the terms of this decision.

(d) Post at its Frederick, Pennsylvania facility copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the election held in Case 4–RC–17695 be set aside and that a second election be directed.

[3] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before 1 January 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp*., 231 NLRB 651 (1977).

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, by interrogating employees concerning their union sympathies and activities or those of other employees; by threatening employees with discharge, loss of assignments, or unspecified reprisals; by disseminating and soliciting employee support for an antiunion petition; or by imposing new shop rules with more onerous terms and conditions of employment.

WE WILL NOT issue disciplinary criticism, remove employees from assignments, lay off any employees and therafter

fail to recall them, or otherwise discriminate against them in retaliation for engaging in union activities, participating in charges filed with the Board, or participating in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Chris Broadt, John MacDonald, and Timothy Wysong immediate and full reinstatement and make them whole for the losses they incurred as a result of the discrimination against them and WE WILL expunge from our files any reference to their layoff or to Broadt's diciplinary criticism or removal from an assignment and notify them in writing that this has been done and that evidence of the unlawful layoff and other actions will not be used as a basis for future personnel actions against them.

THE STALWART ASSOCIATION, INC.